

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SPORT-BLX, INC., *individually and derivatively*
on behalf of its shareholders,

Plaintiff,

**AMENDED NOTICE OF
REMOVAL**

- against -

Civil Action No. 1:22-cv-8111

MICHAEL M. SALERNO, NORTHEAST
PROFESSIONAL PLANNING GROUP, INC.,
CYPRESS HOLDINGS, III, L.P., JOHN AND JANE
DOES 1-4; and XYZ CORPS. 1-4,

Defendants.

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**TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

Defendants Michael M. Salerno (“Salerno”), Northeast Professional Planning Group, Inc. (“NPPG”), and Cypress Holdings, III, L.P. (“Cypress”) (collectively, “Defendants”), by their undersigned attorneys, submit this Amended Notice of Removal in support of their petition for the removal of the above-captioned case to this Court as follows:

1. On September 22, 2022, Defendants filed a Notice of Removal pursuant to 28 U.S.C. § 1441, *et seq.*, and Local Rule 81.1 of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York (the “Local Rules”), to remove this action, then pending in the Supreme Court of the State of New York, New York County, Index No. 652732/2022 (the “State Court Action”), to the United States District Court for the Southern District of New York (“the Notice”) (D.E. 3).

2. On September 28, 2022, the Hon. Lorna G. Schofield, U.S.D.J. entered an Order in this action stating that “the Notice failed to allege the citizenship of any party at both the time

of removal and the time the original action was filed in state court.” (D.E. 4). The Order further provided “that, by **October 7, 2022**, Defendants shall file an amended notice of removal that sufficiently alleges the requirements of removal jurisdiction on the basis of diversity of citizenship, or a letter stating why the case should not be remanded to state court.” (D.E. 4).

3. The State Court Action is a civil action over which the United States District Court for the Southern District of New York has original jurisdiction pursuant to 28 U.S.C. § 1332(a)(1) (diversity of citizenship in civil actions where the matter in controversy exceeds \$75,000.00), and is removable to this Court pursuant to 28 U.S.C. § 1441.

4. On August 3, 2022, Plaintiff Sport-BLX, Inc. (“Plaintiff” or “Sport-BLX”) filed a Summons and Verified Complaint with exhibit in the Supreme Court of the State of New York, County of New York. The Summons and Verified Complaint with exhibit are attached as **Exhibit A** to this Amended Notice of Removal. Pursuant to Local Rule 81.1(5), Salerno, NPPG and Cypress state that each was served with the Summons and Verified Complaint with exhibit on August 24, 2022.

5. The Summons and Verified Complaint with exhibit were first received by Salerno, NPPG, and Cypress on August 24, 2022. Affidavits of Service were filed with the Supreme Court of the State of New York, County of New York on August 31, 2022 and are attached to this Amended Notice of Removal as **Exhibit B**. The Notice was timely filed on September 22, 2022 pursuant to 28 U.S.C. § 1446(b) and Defendant submits this Amended Notice of Removal in accordance with the Court’s September 28, 2022 Order.

6. To the best of counsel’s knowledge, no papers other than the Summons and Verified Complaint with exhibit and related Affidavits of Service, annexed hereto as **Exhibit A**

and **Exhibit B** respectively, have been filed and no further proceedings have occurred in the State Court Action.

7. The Verified Complaint asserts claims of breach of fiduciary duty, tortious interference with prospective economic advantage, breach of the implied covenant of good faith and fair dealing, and aiding and abetting breaches of fiduciary duty against Defendants. (*See* Exhibit A, Complaint at ¶¶ 144-175).

8. Plaintiff alleges damages in excess of \$75,000.00 (*See id.* at ¶ 151) (alleging that “[t]ogether, those refusals cost Sport-BLX’s shareholders approximately \$35,000,000.00 looking backward from Salerno’s termination, and a significant amount more to be determined at trial looking forward.”). Accordingly, the Verified Complaint satisfies the requirement of 28 U.S.C. § 1332(a)(1) in that the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

9. As set forth below, the parties’ citizenship satisfies the diversity requirement of 28 U.S.C. § 1332(a)(1).

10. At the time the State Court Action was filed on August 3, 2022 and from the time that Defendants filed the Notice to remove this action to the United States District Court for the Southern District of New York on September 22, 2022 to present, Plaintiff Sport-BLX was and is a corporation organized and existing pursuant to the laws of the State of Delaware, with its principal place of business in New York, New York. (*See* Exhibit A, Complaint at ¶ 10). Sport-BLX, therefore, was and is a citizen of both the State of Delaware and the State of New York.

11. At the time the State Court Action was filed on August 3, 2022 and from the time that Defendants filed the Notice to remove this action to the United States District Court for the

Southern District of New York on September 22, 2022 to present, Defendant Salerno was and is a citizen of the State of New Jersey.

12. At the time the State Court Action was filed on August 3, 2022 and from the time that Defendants filed the Notice to remove this action to the United States District Court for the Southern District of New York on September 22, 2022 to present, Defendant NPPG was and is a domestic profit corporation organized and existing pursuant to the laws of the State of New Jersey, with its principal place of business in Shrewsbury, New Jersey. NPPG, therefore, was and is a citizen of the State of New Jersey.

13. At the time the State Court Action was filed on August 3, 2022 and from the time that Defendants filed the Notice to remove this action to the United States District Court for the Southern District of New York on September 22, 2022 to present, Defendant Cypress was and is a limited partnership organized and existing pursuant to the laws of the State of Delaware, with its principal place of business in Shrewsbury, New Jersey. For purposes of diversity jurisdiction, limited partnerships such as Cypress have the citizenship of each of its general and limited partners. *See Handelsman v. Bedford Vill. Assocs. Ltd. P'Ship*, 213 F.3d 48, 52 (2d Cir. 2000). At the time the State Court Action was filed on August 3, 2022 and from the time that Defendants filed the Notice to remove this action to the United States District Court for the Southern District of New York on September 22, 2022 to present, all of Cypress' general and/or limited partners were and are citizens of the State of New Jersey and none were or are citizens of either the State of Delaware or the State of New York.

14. Therefore, the parties are diverse and subject matter jurisdiction in this Court is proper.

15. Removal does not require the consent of any other party because Salerno, NPPG and Cypress are the only named Defendants in the State Court Action.

16. Written notice of the filing of the Notice was given to Plaintiff and filed with the Clerk of the Supreme Court of the State of New York, New York County, as required by 28 U.S.C. § 1446(d), on September 22, 2022. In addition, written notice of the filing of this Amended Notice of Removal will be given to Plaintiff and filed with the Clerk of the Supreme Court of the State of New York, New York County, as required by 28 U.S.C. § 1446(d).

WHEREFORE, Defendants Salerno, NPPG and Cypress respectfully request that this action be removed from the Supreme Court of the State of New York, County of New York, to the United States District Court for the Southern District of New York.

Dated: October 4, 2022

Respectfully submitted,

CHIESA SHAHINIAN & GIANTOMASI PC

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Northeast Professional Planning Group, Inc., and
Cypress Holdings, III, L.P.*

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